

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.E., Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVAL  
CRIMINAL INVESTIGATIVE SERVICE,  
Washington, DC, Employer**

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**Docket No. 17-1601  
Issued: January 19, 2018**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 26, 2017 appellant filed a timely appeal from a July 13, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish a consequential bilateral hearing loss.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted new evidence with her appeal. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. Thus, the Board is unable to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

## **FACTUAL HISTORY**

On April 10, 2011 appellant, then a 42-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on April 8, 2011 she became extremely ill while she was on temporary-duty assignment in the Philippines. OWCP accepted the claim for anxiety disorder, chronic post-traumatic stress disorder, recurrent major depressive disorder, Stevens-Johnson syndrome, tear film insufficiency, bilateral toxic epidermal necrolysis, sexual dysfunction, and vaginismus not due to known physiologic condition or substance.<sup>3</sup> Appellant stopped work on April 12, 2011 and returned on May 10, 2011.<sup>4</sup>

On January 3, 2017 appellant filed a claim for a schedule award (Form CA-7).

On January 6, 2017 OWCP received a January 24, 2014 audiogram.

In a letter dated January 13, 2017, OWCP informed appellant that it was unclear for which accepted condition she was claiming a schedule award. It requested clarification of the schedule award claim.

In a January 25, 2017 letter, appellant alleged hearing loss due to the accepted condition of bilateral toxic epidermal necrolysis. She noted that her hearing worsened and that in July 2016 she underwent surgery to remove an infected saliva gland near her right ear.

By decision dated April 13, 2017, OWCP denied appellant's request to expand acceptance of her claim to include a consequential bilateral hearing loss. It found the evidence submitted contained no medical report from a physician diagnosing an ear condition or explaining how it was related to her accepted conditions.

On May 8, 2017 appellant requested reconsideration and submitted additional evidence.

In an April 7, 2017 report, Dr. Scott Scharer, a treating Board-certified otolaryngologist, noted that appellant was seen for complaints of hearing loss and prior parotid surgery. He provided a history of her complaints, a sleep apnea assessment, and physical examination findings. Diagnoses included chronic sialoadenitis with chronic lymphoma, bilateral hearing loss, obstructive sleep apnea, skin fibrosis, and scar conditions. With respect to her hearing loss appellant complained of muffled hearing greater in her right ear than her left. Dr. Scharer observed no visible cerumen, effusion otitis, or impaction in either ear on examination. He recommended an updated hearing evaluation as the last audiogram was performed in 2014.

In an April 28, 2017 report, Allison Waters, an audiologist, diagnosed left ear sensorineural hearing loss with unrestricted contralateral ear hearing and mixed right ear hearing loss. She detailed appellant's medical conditions under medical history. Ms. Waters opined that

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<sup>3</sup> On March 11, 2015 OWCP granted appellant a schedule award for 52 percent permanent impairment of the skin. In a December 7, 2016 decision, it granted her a schedule award for 20 percent right eye permanent impairment and 15 percent left eye permanent impairment.

<sup>4</sup> Appellant retired on disability from the employing establishment effective April 1, 2015.

the mixed hearing loss was consistent with the recurrent middle ear infections appellant stated she had with her Steven-Johnson syndrome.

By decision dated July 13, 2017, OWCP denied modification. It found the medical evidence insufficient to establish her claim as Dr. Sharer offered no opinion regarding cause of the diagnosed conditions and Ms. Waters was not considered a physician under FECA as she is an audiologist.

### **LEGAL PRECEDENT**

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.<sup>5</sup> The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>6</sup> With respect to consequential injuries, the Board has held that, where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable.<sup>7</sup>

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is an opinion of reasonable medical certainty supported by sound medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>8</sup>

### **ANALYSIS**

OWCP accepted appellant's claim for anxiety disorder, chronic post-traumatic stress disorder, recurrent major depressive disorder, Stevens-Johnson syndrome, tear film insufficiency, bilateral toxic epidermal necrolysis, sexual dysfunction, and vaginismus not due to known physiologic condition or substance as a result of the accepted April 8, 2011 work injury. The Board finds that appellant has failed to submit sufficient medical evidence to establish a bilateral hearing loss causally related to her accepted Stevens-Johnson syndrome or bilateral toxic epidermal necrolysis.

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<sup>5</sup> *Albert F. Ranieri*, 55 ECAB 598 (2004); *Clement Jay After Buffalo*, 45 ECAB 707 (1994); *John R. Knox*, 42 ECAB 193 (1990).

<sup>6</sup> *S.M.*, 58 ECAB 166 (2006); *Debra L. Dillworth*, 57 ECAB 516 (2006); *Carlos A. Marrero*, 50 ECAB 117 (1998); A. Larson, *The Law of Workers' Compensation* § 10.01 (2005).

<sup>7</sup> *L.S.*, Docket No. 08-1270 (issued July 2, 2009); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>8</sup> *J.B.*, Docket No. 14-1474 (issued March 13, 2015).

In support of her claim appellant submitted an April 7, 2017 report from Dr. Scharer who diagnosed bilateral hearing loss. However, Dr. Scharer offered no opinion as to the cause of the diagnosed bilateral hearing loss. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>9</sup> Thus, Dr. Scharer's report is insufficient to support appellant's claim for a consequential hearing loss.

Appellant also submitted an April 28, 2017 report from an audiologist, Ms. Waters, who attributed appellant's mixed hearing loss to the recurrent middle ear infections resulting from the accepted Steven-Johnson syndrome. The Board notes that audiologists are not included among the healthcare professionals defined as a physician under FECA.<sup>10</sup> Therefore, Ms. Waters' opinion is of no probative medical value regarding causal relationship.<sup>11</sup>

The Board finds that appellant has failed to submit appropriate medical documentation supporting her claim for a consequential hearing loss. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.<sup>12</sup> An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>13</sup> Causal relationships must be established by rationalized medical opinion evidence. Consequently, appellant did not establish a consequential hearing loss.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a consequential bilateral hearing loss.

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<sup>9</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>10</sup> 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See *J.K.*, Docket No. 17-0321 (issued April 24, 2017); *Leon Thomas*, 52 ECAB 202 (2001) (an audiologist is not a physician under FECA).

<sup>11</sup> See *R.V.*, Docket No. 12-248 (issued June 6, 2012); *Thomas O. Bouis*, 57 ECAB 602 (2006).

<sup>12</sup> *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>13</sup> *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 13, 2017 is affirmed.

Issued: January 19, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board